IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2816 of 2000
With
SPECIAL CIVIL APPLICATION No. 6849 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AKSHAY CHEMICALS PVT LTD - Petitioner(s)
Versus
PURSHOTTAM YADAV - Respondent(s)

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Appearance :
MR MIHIR H JOSHI for Petitioner(s) : 1,
MR PH PATHAK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/06/2007

ORAL JUDGMENT

1. The workman Purshottam Yadav, being partly aggrieved by the award dated 31.8.99 passed by

the Presiding officer, Labour Court, Bharuch, in Reference LCV No. 630/90 [old Reference LCV No. 55/90], has filed Special Civil Application No. 6849/01 with a prayer that this Court should interfere in the matter and award 100% back wages.

2. Employer – Akshay Chemicals Pvt. Ltd., being aggrieved by the award of the Labour Court, directing reinstatement of workman with 40% back wages, has filed Special Civil Application No. 2816 of 2000.

3. The short facts necessary for disposal of the writ applications are that the workman obtained Reference before the Labour Court on the ground that he had been unceremoniously removed from services on 26.10.89. According to him, provisions of Section 25F of the Industrial Disputes Act, 1947 were not observed and no inquiry was conducted against the interest of the petitioner.

4. The establishment, however, submitted that the workman was residing in the quarter of the company with some of his relations and as there was some fight between the two, afraid of a police complaint, the workman left the quarter, abandoned the services and started working as rickshaw driver. According to them, present was not a case of termination or retrenchment, but was a case of voluntarily abandoning the services.

5. The learned Labour Court granted opportunity to

the parties to lead oral evidence, the workman produced the evidence, but the establishment/industry did not lead any evidence. After hearing the parties, the learned Labour Court answered the Reference in favour of the workman with a direction for his reinstatement and payment of 40% back wages.

6. Ms. Amrita Thakor, learned counsel for the establishment submits that at the request of the workman, Reference LCV No. 671/90 [Reference LCV No. 245/91] was made and as the same was dismissed for want of prosecution on 23.9.91, the Reference in dispute could not be proceeded with.

7. On being asked that whether a question was raised before the Labour Court, Ms. Thakor fairly conceded that this question and effect of the earlier rejection of the Reference were never raised before the Labour Court. In the opinion of this Court, if such question was not raised before the Labour Court, then, at the High Court level, the establishment would not be allowed to raise this question for the first time.

8. It was next submitted by Ms. Thakor that in absence of evidence that the workman had completed 240 days in 12 calander months preceding the date of termination or retrenchment, no relief could be granted to the workman. Placing reliance upon the judgment of the Apex Court in the matter of *Manager, Reserve*

Bank of India, Bangalore v. S. Mani & others, reported in [2005] 5 SCC 800, she submitted that in absence of cogent and clinching evidence, the matter should have been dismissed by the Labour Court.

9. In the said matter, the parties were at issue that whether the workman had completed 240 days or not. In the present matter, the parties were not at issue that whether the workman had completed 240 days' qualifying services. It is not in dispute before me that the establishment/industry did not raise a plea that in absence of completion of 240 days' qualifying service, the workman was not entitled to an order of reinstatement. Ms. Thakor however, submits that as the initial burden was upon the workman to prove that he had worked for 240 days, non-raising of the plea by the establishment would not make much difference.

10. In the case of Manager, Reserve Bank of India [supra], question that workman had completed 240 days was in issue. There, the learned courts below held that the burden was upon the establishment to prove that the workman did not work for 240 days. The Apex Court held that the initial burden was upon the workman and if he failed in discharging the initial burden, the establishment was not required to prove anything else. In the present case, nobody had said that the workman worked for 240 days or did not work for 240 days. The parties proceeded on the

premise that the workman was regularly working, was regular workman and was entitled to protection under the law. The defence raised by the establishment was that present was a case of voluntary abandonment of the services and not that the workman did not complete 240 days.

11. From the records, it appears that the workman stepped in the witness box and proved his case that he was removed from the services. If such was the statement on oath, then, it was a duty cast upon the establishment to controvert the evidence by asking somebody to step in the witness box or by effectively cross-examining the workman and shatter his case to the satisfaction of the court that he was not retrenched or terminated, but in fact, he had abandoned the services. In absence of any evidence, which could controvert the submissions/statements of the workman, the court below was absolutely justified in relying upon the uncontroverted statements of the workman. Special Civil Application No. 2816/00 filed by the establishment deserves to and is accordingly dismissed.

12. In Special Civil Application No. 6849/01, Shri Pathak submits that the learned court below was unjustified in not awarding 100% back wages, specially when the Labour Court had observed that the petitioner's case fell under illegal retrenchment.

13. In the opinion of this Court, the learned court

below had given cogent reasons for not awarding 100% back wages. At this stage, it would be necessary to refer to the argument of Ms. Thakor that the petitioner never approached to the establishment with a plea that he had not abandoned the work, therefore, he be continued. Even otherwise, the petitioner-workman has not shown his entitlement to 100% of the back wages. I do not think that this Court is required to interfere in Special Civil Application No. 6849 of 2001.

14. Both the petitions are dismissed. Rule is discharged in each of the petition. Interim relief, if any is vacated. No costs.

[R.S. GARG, J.]

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